CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 3002 *Tel. (631) 377-3583* *E-Mail: cja@judgewatch.org*
Southampton, New York 11969 *Website: www.judgewatch.org*

Elena Ruth Sassower, Director

August 19, 2011

Denis M. Hughes, President, New York State AFL-CIO

RE: Request for a Meeting & Reconsideration by the New York State AFL-CIO of its Support for Judicial Pay Raises

Dear Mr. Hughes:

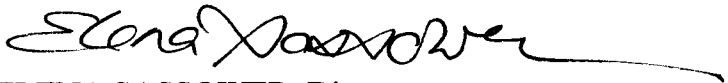
On July 20th, upon conclusion of your testimony before the Commission on Judicial Compensation in which you stated that the 2-1/2 million members of the New York State AFL-CIO support raising judicial salaries, I called out a question to you as to whether you had polled your members. That question – and your response – are set forth at page 6 of CJA's enclosed August 8th letter to the Commission, to which you are an indicated recipient for that reason. The substantiating exhibits to the letter, as likewise CJA's prior correspondence to the Commission and the evidentiary proof to which it refers, are posted on CJA's website, www.judgwatch.org, accessible *via* the top panel "Latest News".

Evident from your testimony is that it adopts the false and misleading claims of the judicial-legal establishment, uncritically circulated and reinforced by the media. I, therefore, respectfully request to meet with you and other leaders of the New York State AFL-CIO to discuss the true facts concerning the judicial pay raise issue, consistent with the interests of your 2-1/2 million members.

Please deem CJA's enclosed August 8th letter and our subsequent August 17th letter to "Advocates of Judicial Pay Raises" – of which you are one – in support of this request for a meeting and for reconsideration of the New York State AFL-CIO's position. That August 17th letter is attached to the e-mail transmitting this letter and also posted on our website.

Thank you.

Yours for a quality judiciary,



ELENA SASSOWER, Director
Center for Judicial Accountability, Inc. (CJA)

Enclosure
cc: Commission on Judicial Compensation
Public & Press

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director
Doris L. Sassower, President

August 8, 2011

TO: New York's Judicial Compensation Commission
William C. Thompson, Jr., Chairman
Richard Cotton
William Mulrow
Robert Fiske, Jr.
Kathryn S. Wylde
James Tallon, Jr.
Mark Mulholland

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Threshold Issues Barring Commission Consideration of Pay Raises for Judges:
(1) Chairman Thompson's Disqualification for Interest, as to which there has been No Determination;
(2) Systemic Corruption in New York's Judiciary, Embracing the Commission on Judicial Conduct, as to which there has been No Determination; &
(3) The Fraud & Lack of Evidence Put Forward by Advocates of Judicial Pay Raises.

In its item "*Judicial Pay Commission to Meet Today*", today's New York Law Journal reports that Chairman Thompson said that "[Commission] members are expected to begin discussing specific raise levels for judges".

This is improper. The Commission has yet to rule on the threshold issue of Chairman Thompson's disqualification for interest. Such threshold issue was presented more than six week ago, by CJA's June 23rd letter to Chairman Thompson and the Commissioners, without response. Indeed, at the Commission's July 20th hearing, the Commission's only response to my objection that it had neither confronted nor publicly disclosed the disqualification issue was to cut me off and allow Chairman Thompson to cut me off, without any ruling, over my rightful protest. This is memorialized by the video.

In the absence of any stenographic transcription of the hearing,[1] I have myself transcribed, from the video, what took place when I testified. A copy is enclosed to rebut the fiction of Joel Stashenko's

[1] By a July 21, 2011 letter CJA asked the Commission whether it was planning to stenographically

July 29, 2011 Law Journal article "*Commission to Focus on Amount of Judges' Raise*" purporting that, at the hearing, Chairman Thompson "refused" to recuse himself. That Chairman Thompson also supposedly

> "explained later that his father, now 86, has been off the bench since his mandatory retirement at age 76 and would not profit in any way by a salary adjustment"

further underscores that Chairman Thompson can only conceal "the real disqualification that he faces" – which is how I identified it at the hearing, unreported by Mr. Stashenko – *to wit*, that his father, William Thompson, Sr.:

> was the highest-ranking judicial member of the New York State Commission on Judicial Conduct for many, many years and was himself the subject of repeated judicial misconduct complaints...
>
> And his misconduct that was the subject of those complaints resulted in lawsuits both against him personally and against the Commission on Judicial Conduct."

Nor did my testimony and CJA's media-suppressed May 23rd and June 23rd letters to which I referred when I testified "claim widespread corruption in the Judiciary", as Mr. Stashenko reports. Rather, they emphasized documentary evidence establishing "systemic judicial corruption in this State's judiciary, infesting appellate and supervisory levels of our justice system and involving the New York State Commission on Judicial Conduct". It is from this evidenced-based corruption that Chairman Thompson's disqualification arises.

At the hearing, I publicly identified a portion of this evidence: "the final two motions in the lawsuit brought against the Commission on Judicial Conduct that went up to the Court of Appeals" – copies of which I left for you, stating that from them you would be able to:

> "verify that the Commission was the beneficiary of a succession of fraudulent judicial decisions without which it would not survived, including four of the Court of Appeals."

If the Commission – three of whose members are lawyers – believes that without ruling on Chairman Thompson's disqualification for interest, it can lawfully proceed to discuss "specific raise levels for judges", it should state this publicly, with legal authority, disclosing the specifics of the disqualification detailed by CJA's June 23rd letter.

As set forth by CJA's June 23rd letter, "corruption and lawlessness of New York's state judiciary, infesting its supervisory and appellate levels", disentitles it to any boost in judicial compensation.

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transcribe the hearing video and post it on its website and whether the absence of any stenographer at the hearing was "the result of austerity measures necessitated by the catastrophic financial situation of our State, to which Budget Director Robert Megna attested at the hearing". We received no response.

Such corruption and lawlessness are not only "appropriate factors" for your consideration under the statute requiring you to consider "all appropriate factors", but your disregard of these factor would be unconstitutional pursuant to the very February 23, 2010 Court of Appeals decision in the judicial compensation cases that underlies the Commission's creation.

In that decision – whose fraudulence was particularized by CJA's July 19, 2011 letter to which I referred at the hearing – the Court of Appeals searched the New York State Constitution for a textual basis to reject the "linkage" of judicial salaries with legislative and executive salaries and found "significant" that although the legislature is vested with the power to raise salaries, the provisions relating to the compensation of judicial, legislative, and executive officers are not set forth in the legislative article of the Constitution, but within the separate articles for each branch. The Court held that it is within the separate judiciary article that determination is to be made as to whether, on "its own merit", New York State judges deserve an increase in compensation.

Article VI is the judiciary article of the New York State Constitution and it provides not only appellate, administrative, and disciplinary safeguards for ensuring judicial integrity, but express procedures for removing unfit judges. Indeed, Article VI specifies three means for removing judges – the Commission on Judicial Conduct [§22], concurrent resolution by the legislature [§23], and impeachment [§24]– and these in the three sections that IMMEDIATELY precede §25(a) to which judges point in clamoring that inflation has unconstitutionally diminished their compensation:

> "The compensation of a judge...shall not be diminished during the term of office for which he was elected or appointed."

Of these three means for judicial removal provided by Article VI, concurrent legislative resolution and judicial impeachment exist in name only – having given way to the Commission on Judicial Conduct, as to which, more than 22 years ago, the New York State Comptroller issued a report entitled "*Not Accountable to the Public*", calling for legislation to permit independent auditing of its handling of judicial misconduct complaints.[2] Such never happened – and 20 years later, in 2009, at Senate Judiciary Committee hearings on the Commission on Judicial Conduct – the first legislative hearings on the Commission since 1987 – its corruption was attested to by two dozen New Yorkers who provided and proffered supporting documentation – as to which, to date, there has been NO investigation, NO findings, and NO committee report.

It was CJA's position, presented by our May 23rd and June 23rd letters and reiterated by my July 20th testimony that:

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[2] The Comptroller's 1989 Report and accompanying December 7, 1989 press release, "*Commission on Judicial Conduct Needs Oversight*", are posted on CJA's website, www.judgewatch.org, most readily accessible *via* the sidebar panel "Library". Because of its importance – and so that they may be physically part of this Commission's record – a copy of each is being furnished with this letter.

> "There must be NO increase in judicial compensation UNTIL there is an official investigation of the testimony and documentation that the public provided and proffered to the Senate Judiciary Committee in connection with its 2009 hearings and UNTIL there is a publicly-rendered report with factual findings with respect thereto...[and] until mechanisms are in place and functioning to remove judges who deliberately pervert the rule of law and any semblance of justice and whose decisions are nothing short of 'judicial perjuries', being knowingly false and fabricated." (May 23rd letter, capitalization in the original)[3]

Our position now is stronger. The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just "appropriate factors", but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.[4]

Finally, and reiterating what I stated at the July 20th hearing, this Commission has been inundated by fraud from the advocates of judicial pay raises, who have furnished a combination of no evidence and irrelevant and misleading evidence to support their claims. From my list of "20 specific frauds", to which I referred, I sufficed to identify only one: their claim that we have "a quality, excellent, top-rate judiciary" with judges discharging their constitutional duties.

The documentary evidence I left for you, on the table, at the July 20th hearing – the two final motions in CJA's lawsuit against the Commission on Judicial Conduct [5] – puts the lie to the supposed "excellence" and "quality" of a score of judges whose fraudulent judicial decisions, protecting the Commission on Judicial Conduct, are therein demonstrated, covering up the corruption of scores of other judges – William Thompson, Sr., pivotally among them – as documented in underlying case records.

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[3] The correctness of this position may be seen from the federal statute for the Citizens' Commission on Public Service and Compensation, requiring that its review of compensation levels of federal judges, the Vice-President, Senators, Representatives, and others include "any public policy issues involved in maintaining appropriate ethical standards" – with "findings or recommendations" pertaining thereto "included by the Commission as part of its report to the President" [2 U.S.C. §363].

[4] Such safeguards are properly viewed as comparable to the "good Behaviour" provision of the U.S. Constitution, immediately preceding – and in the same sentence – as the prohibition against diminishment of federal judicial compensation [U.S. Constitution, Article III, §1].

[5] The further documentary evidence I left for you, at the hearing, consisted of: (1) CJA's December 16, 2009 written statement drafted for the Senate Judiciary Committee's aborted December 16, 2009 hearing – whose significance our June 23rd letter highlights (at p. 3); and (2) CJA's two March 6, 2007 statements, submitted to the Senate Judiciary Committee in opposition to confirmation of Chief Judge Kaye's reappointment to the Court of Appeals – whose significance the December 16, 2009 written statement highlights (at p. 4).

Unless you are intending to recommend judicial pay raises without predicate findings, based on evidence, that our New York State judges are doing their jobs, in compliance with the Constitution and the Rule of Law, and that safeguarding mechanisms are functioning, your obligation to the People of this State is to confront this rebutting evidence. As I reasonably suggested, *twice*, as you curtailed and concluded my presentation, you should call upon the advocates of judicial pay raises to assist you with fact-finding.

By copy of this letter to the bar association leaders who testified before you on July 20th, and to Victor Kovner, Chair of the Fund for Modern Court, who also testified, and to the Brennan Center for Justice's Executive Director Michael Waldman and the Senior Counsel of its Democracy Program J. Adam Skaggs, who submitted a July 19th letter to you, CJA calls upon them to justify – if they can – the succession of fraudulent judicial decisions particularized by the final two motions in CJA's lawsuit against the Commission on Judicial Conduct for which the taxpayers of this State should be rewarding the judiciary with pay raises.

We leave it to you to call upon the judges and former judges who testified and presented written submissions – and especially former Chief Judge Judith Kaye – to justify the decisions in that case, depriving the People of their constitutional entitlement to a functioning agency for removing corrupt judges.

This they can all easily do as those two motions – and virtually the entire record of the case – are posted on CJA's website, www.judgewatch.org, accessible *via* the sidebar panel "Test Cases-State (*Commission*)".[6] Certainly, too, we would be happy to furnish hard copies of the motions and the full, actual record, that was before the Court of Appeals, to assist all these "excellent" "quality" judges and top-flight, well-paid lawyers with their fact-finding.

As for the other 19 frauds on my list, several were evident from my comments to two of the advocates for judicial pay raises, upon the conclusion of their testimony – and audible to varying degrees from the video. Most audible was what I said after the testimony of Supreme Court Justice Charles Wood. Reacting to his concluding emphasis that New York State judges are "constitutional officers" and his declaration "The fact that we are not employees we are 'constitutional officers' should be paramount for your consideration...", which followed his claims that in being denied pay raises, judges had been "taken advantage of" and not treated as "participants of a co-equal branch" [video: at 03:45:15], I called out the true facts[7]:

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[6] The New York State Bar Association and Fund for Modern Courts, to whom I personally furnished copies of these two final motions on December 11, 2002, should still have them in their possession, as they never returned them to us. The circumstances under which those motions were provided is set forth in my transcription of my public questions to them at the December 11, 2002 forum they co-sponsored on the Commission on Judicial Conduct. A copy is enclosed. [also see CJA's December 16, 2009 draft statement (at p. 15)].

[7] These facts, invariably concealed by advocates of judicial pay raises, are particularized by CJA's July

[video: at 03:46:57]

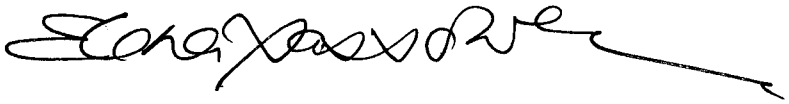
> "None of the constitutional officers have gotten a pay raise since 1999 – the Legislators, Governor, Lieutenant Governor, Attorney General, Comptroller.
>
> None of them have gotten pay raises. You're making the wrong comparisons, self-serving comparisons, improper comparisons....
>
> It's a fraud. It's a fraud, and you know it..."

Less audible was my question to Dennis Hughes, who identified himself as "President of the 2-1/2 million state AFL-CIO, representing men and women across the state in every sector, trade and profession" [01:54:25] and whose response to the concluding question of Commissioner Mulholland: "so we're clear, as I understand you, you're saying that your 2 million-plus constituents, the workers of New York, are in favor of seeing judges' salaries raised to an appropriate level?", was his answer "yes they are" [02:01:31]. To clarify this, my question to Mr. Hughes was whether he had polled the members of his organization, to which Mr. Hughes, repeating my question, sheepishly acknowledged that the answer was no.

CJA's August 1st letter to Commissioner Wylde and the other Commissioners and CJA's August 5th letter to New York Times reporter William Glaberson – to which you were sent copies – expose a significant number of further frauds presented by witnesses. The balance will be exposed in future correspondence.

Meantime, the Commission should be guided by the legal principle applicable to fraud:

> "It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause ... and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates indefinitely, though strongly, against the whole mass of alleged facts constituting his cause." II John Henry Wigmore, Evidence, §278 at 133 (1979).



19th letter to Attorney General Schneiderman (at pp. 3-4), which was sent to you, as well as by CJA's August 5th letter to New York Times reporter William Glaberson (at p. 5), also sent to you.

Enclosures:

(1) stenographic transcription, from the video, of Elena Sassower's testimony before the Commission at its July 20, 2011 hearing;

(2) Comptroller Edward Regan's 1989 report "*Not Accountable to the Public*" and December 7, 1989 press release "*Commission on Judicial Conduct Needs Oversight*";

(3) stenographic transcript, from audiotape, of Elena Sassower's questions at the December 11, 2002 forum on the Commission on Judicial Conduct, co-sponsored by the New York State Bar Association and Fund for Modern Court

cc: <u>New York bar association leaders who testified at the July 20, 2011 public hearing</u>
Vincent E. Doyle, III, President, NYS Bar Association
Roger Juan Maldonado, Chair, Council on Judicial Administration/NYC Bar Association
Stewart Aaron, President, NY Co. Lawyers' Association
Leslie Kelmachter, President, NYS Trial Lawyers Association
Lance D. Clarke, Past President, Nassau County Bar Association
Maureen Maney, President-Elect, Women's Bar Association of the State of NY
Fund for Modern Courts:
Victor Kovner, Chairman
Brennan Center for Justice:
Michael Waldman, Executive Director
J. Adam Skaggs, Senior Counsel/Democracy Program
Dennis Hughes, President of New York State AFL-CIO
Public & Press